

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200906040**
Release Date: 2/6/2009

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 301.00-00, 301.01-00,
305.00-00, 305.01-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B05
PLR-143707-08

Date:
October 31, 2008

Legend

Taxpayer =

StateX =

Exchange =

Year1 =

Date1 =

Date2 =

Dear :

This ruling responds to your letter dated October 7, 2008, submitted on behalf of Taxpayer, requesting rulings under Internal Revenue Code (the "Code") sections 301 and 305 (the "Ruling Request"). Additional information was received subsequently.

The rulings contained in this letter are based upon facts and representations that were submitted on behalf of Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This Office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

SUMMARY OF FACTS

Taxpayer is an accrual basis StateX corporation that files its federal income tax returns as a real estate investment trust ("REIT") on a calendar year basis. Taxpayer represents that it qualifies as a REIT under the Code, that it intends to maintain such qualification as a REIT, and that it regularly distributes its earnings and profits as required under section 857(a)(1).

Taxpayer has one class of common stock outstanding (the "Common Stock"), which is publicly traded and listed on the Exchange. All references below to "stockholder" refer to holders of Common Stock.

Subject to the approval of its Board of Directors, Taxpayer intends to make a special dividend (the "Special Dividend") on its Common Stock for the fourth quarter of Year1, as described below. Taxpayer intends to limit the cash portion of the Special Dividend to approximately 20 percent of the Special Dividend; in no event will the total amount of cash available to be distributed be less than 20 percent of the Special Dividend.

Each holder of Common Stock will have the right to elect to receive cash or Common Stock of equivalent value, as follows:

- Cash Alternative – 100 percent cash (subject to adjustment as described below); or
- Stock Alternative – 100 percent Common Stock.

If approved, the Special Dividend is expected to be declared no later than Date1, and is expected to be payable on Date2 (the "Payment Date") to stockholders of record as of the record date.

Taxpayer expects to declare the Special Dividend using the following election mechanism.

Taxpayer will provide to each holder of Common Stock an election form for the Special Dividend shortly after the record date. Each stockholder may elect to receive its dividend by indicating the Cash Alternative or the Stock Alternative by the election deadline. If a stockholder fails to make a valid election by the election deadline, that stockholder will be deemed to have made an election to be determined by Taxpayer at Taxpayer's sole discretion. Stock distributed pursuant to the Special Dividend will be subject to the ownership limitations in Taxpayer's charter (the "Ownership Limitation"). Taxpayer is not aware of any currently-existing shareholder who upon receipt of the Special Dividend will be affected by the Ownership Limitation.

While each stockholder will have the option to elect to receive cash in lieu of Common Stock for the stockholder's full entitlement under the Special Dividend,

Taxpayer currently intends to limit the total cash to be distributed pursuant to the Special Dividend to an amount equal to approximately 20 percent of the Special Dividend (such amount, the "Cash Limit"). In no event will the total amount of cash available to be distributed be less than 20 percent of the Special Dividend. To the extent necessary, Taxpayer will issue cash in lieu of fractional shares of Common Stock. Any cash issued in lieu of fractional shares of Common Stock will not count towards the Cash Limit.

If the total number of shares of Common Stock with respect to which the Cash Alternative is made ("Cash Election Shares") would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limit, then (i) the stockholders who elect the Cash Alternative will receive the Special Dividend entirely in cash, and (ii) the stockholders who elect the Stock Alternative will receive the entire Special Dividend in Common Stock.

If the total number of Cash Election Shares would result in the payment of cash in an aggregate amount that exceeds the Cash Limit, then (i) the stockholders who elect the Stock Alternative will receive the entire Special Dividend in Common Stock, and (ii) the stockholders who elect the Cash Alternative will receive a pro rata portion of the available cash pursuant to the Cash Limit, with the remainder of the Special Dividend being received in shares of Common Stock. Based on this formula, in no case will Cash Election Shares receive less than 20 percent of the Special Dividend in cash.

RULINGS

Based solely on the information provided and the representations made, we rule as follows with respect to the Special Dividend. Any and all of the cash and stock distributed in the Special Dividend (as described above) by Taxpayer shall be treated as a distribution of property with respect to its stock to which section 301 applies. Sections 301 and 305(b). The amount of the distribution of the stock received by any stockholder electing to receive stock will be considered to equal the amount of the money which could have been received instead. §1.305-1(b)(2).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether Taxpayer qualifies as a REIT under subchapter M of the Code. Furthermore, no opinion is expressed with regard to whether the Special Dividend constitutes a Preferential Dividend under section 562(c) of the Code.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representative.

Sincerely,

Thomas I. Russell

Thomas I. Russell
Assistant Branch Chief, Branch 5
Office of Associate Chief Counsel
(Corporate)